IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

In Re: Ethicon Inc., Pelvic Repair System Products Liability Litigation
MDL No. 2327

Civil Action No. 2:16-cv-012024

SHORT FORM COMPLAINT

Come now the Plaintiff(s) named below, and for their Complaint against the Defendants named below, incorporate The First Amended Master Complaint in MDL No. 2327 by reference. Plaintiff(s) further show the court as follows:

1. Female Plaintiff

   Cleo Zyph

2. Plaintiff's Spouse (if applicable)

   _____

3. Other Plaintiff and capacity (i.e., administrator, executor, guardian, conservator)

   _____

4. State of Residence

   Oregon

5. District Court and Division in which venue would be proper absent direct filing.

   Oregon District Court

   _____

6. Defendants (Check Defendants against whom Complaint is made):

   ☒ A. Ethicon, Inc.

   ☒ B. Johnson & Johnson

☐ C. American Medical Systems, Inc. ("AMS")

☐ D. Boston Scientific Corporation

☐ E. C. R. Bard, Inc. ("Bard")

☐ F. Sofradim Production SAS ("Sofradim")

☐ G. Tissue Science Laboratories Limited ("TSL")

☐ H. Mentor Worldwide LLC

☐ I. Coloplast Corp.

☐ J. Cook Incorporated

☐ K. Cook Biotech, Inc.

☐ L. Cook Medical, Inc.

☐ M. Desarrollo e Investigación Médica Aragonesa, S.L. ("DIMA")

☐ N. Neomedic International, S.L.

☐ O. Neomedic Inc.

☐ P. Specialties Remeex International, S.L.

7. Basis of Jurisdiction

☒ Diversity of Citizenship

☐ Other: _____

A. Paragraphs in Master Complaint upon which venue and jurisdiction lie:

9-11

_____

_____

B. Other allegations of jurisdiction and venue:

_____

_____

_____

_____

8. Defendants' products implanted in Plaintiff (Check products implanted in Plaintiff)

- ☐ Prolift
- ☐ Prolift +M
- ☐ Gynemesh/Gynemesh PS
- ☐ Prosima
- ☐ TVT
- ☐ TVT-Obturator (TVT-O)
- ☐ TVT-SECUR (TVT-S)
- ☐ TVT-Exact
- ☐ TVT-Abbrevo
- ☒ Other

Prolene

_____

9. Defendants' Products about which Plaintiff is making a claim. (Check applicable products):

- ☐ Prolift
- ☐ Prolift +M
- ☐ Gynemesh/Gynemesh PS
- ☐ Prosima
- ☐ TVT

☐ TVT-Obturator (TVT-O)

☐ TVT-SECUR (TVT-S)

☐ TVT-Exact

☐ TVT-Abbrevo

☒ Other

Prolene

10. Date of Implantation as to Each Product:

08/30/2001

11. Hospital(s) where Plaintiff was implanted (including City and State):

St. Anthony Hospital (Pendleton, OR)

12. Implanting Surgeon(s):

Patricia J. Winn, MD

13. Counts in the Master Complaint brought by Plaintiff(s):

☒ Count I – Negligence

☒ Count II – Strict Liability – Manufacturing Defect

☒ Count III – Strict Liability – Failure to Warn

☐ Count IV – Strict Liability – Defective Product

☒ Count V – Strict Liability – Design Defect

☐ Count VI – Common Law Fraud

☒ Count VII – Fraudulent Concealment

☒ Count VIII – Constructive Fraud

☒ Count IX – Negligent Misrepresentation

☒ Count X – Negligent Infliction of Emotional Distress

☒ Count XI – Breach of Express Warranty

☐ Count XII – Breach of Implied Warranty

☐ Count XIII – Violation of Consumer Protection Laws

☒ Count XIV – Gross Negligence

☒ Count XV – Unjust Enrichment

☐ Count XVI – Loss of Consortium

☒ Count XVII – Punitive Damages

☐ Count XVIII – Discovery Rule and Tolling

☒ Other Count(s) (Please state factual and legal basis for other claims below):

Defendant has an obligation not to violate the law in the manufacture, design, testing, assembly, inspection, labeling, packaging, supplying, marketing, selling, preparing for use, and warning of the risks and dangers of the subject synthetic mesh system it sells.

Defendant's acts constitute an adulteration, misbranding, or both, as defined by the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321 et seq. and parallel state Food, Drug and Cosmetic Acts and state common law. Said acts constitute a breach of duty subjecting Defendant, to civil liability for the damages arising there from inasmuch as such acts constitute negligence per se.

Plaintiff, as a patient and implantee exposed to Defendant's synthetic mesh systems, is within the class of persons the statutes and regulations described above are designed to protect, and Plaintiff's injuries are the type of harm these statutes and regulations are intended to prevent.

As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiff suffered injuries and damages, as set forth in this Complaint.

Fraud:

Defendants falsely and fraudulently represented to Plaintiff, her physicians, and to members of the general public that the aforesaid product was safe, effective, reliable, consistent, and better than the other similar procedures when used in the manner intended by the manufacturer. The representations by said Defendants were in fact, false. The true facts include, but are not limited to that the aforesaid product was not safe to be used for POP and/or SUI repair, and was, in fact, dangerous to the health and body of Plaintiff.

When the Defendants, made these representations, they knew that they were false. Defendants made said representations with the intent to defraud and deceive Plaintiff, and with the intent to induce Plaintiff to act in the manner herein alleged, that is to use the aforementioned product for POP and/or SUI repair.

At the time Defendants made the aforesaid representations Plaintiff took the actions herein alleged, Plaintiff and her physicians were ignorant of the falsity of these representations and reasonably believed them to be true. In reliance upon said representations, Plaintiff was induced to, and did, use the aforesaid product as herein described. If Plaintiff had known the actual facts, she would not have taken such action. The reliance of Plaintiff and her physicians upon Defendants' representations were justified because said representations were made by individuals and entities who appeared to be in a position to know the true facts.

As a result of Defendants' fraud and deceit, Plaintiff was caused to sustain the herein described injuries and damages.

s/Mark A. Milstein
Attorney(s) for Plaintiff

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